

SERVED: May 13, 1999

NTSB Order No. EA-4764

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 11th day of May, 1999

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15088
v.)	
)	
OWEN CARL BELL,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed the oral initial decision and order issued by Administrative Law Judge William A. Pope, II, on June 10, 1998, at the conclusion of an evidentiary hearing.¹ In that decision, the law judge affirmed the Administrator's amended order, revoking all of respondent's airman certificates, and his medical certificate, as a result of his false and fraudulent applications for medical certificates, in violation of Federal

¹An excerpt from the hearing transcript containing the initial decision is attached.

Aviation Regulations (FAR) sections 61.5(c), 61.53, and 67.20, 14 CFR Parts 61, 67, and 91.² Respondent has raised several procedural and substantive issues in this appeal,³ none of which have merit.⁴ For the reasons that follow, his appeal is denied.

Respondent is a retired physician. On July 19, 1996, he took off from Taxiway Sierra at Nashville International Airport, when his ATC clearance was to take off from Runway 20 Center. There is evidence that other pilots had taken off from this particular taxiway instead of Runway 20 Center, on at least five occasions. The Airport Authority had apparently placed barricades along the taxiway so that it would not be mistaken for the runway, but the barricades had been removed a week before this incident. The taxiway had by then been marked, signs had been posted, and a pilot warning had been recorded on ATIS.

The Administrator presented the testimony of the ground controller, the local controller, and the supervisory controller

²Respondent was also found in violation of FAR sections 91.130(a), 91.129(i), and 91.13(a), as a result of his mistaken takeoff from a taxiway, instead of the runway from which he had been cleared by air traffic control (ATC).

³The Administrator has filed a brief in reply, urging the Board to affirm the initial decision and order.

⁴The Administrator amended the complaint sixteen days before the hearing. The original order revoked any and all "pilot" certificates held by respondent. The amended order specifically revoked his commercial certificate, his special issuance second-class medical certificate issued in March 1998, his mechanic certificate with airframe and powerplant ratings and inspection authorizations, and his ground instructor certificate, under the authority of FAR section 67.20. No additional allegations of fact or FAR violations were made in the amended order, and we perceive no prejudice to respondent because of the amendment.

who were on duty at the time of the incident. All testified that they had visual contact with respondent's aircraft from the Tower, and that their attempts to contact respondent before takeoff failed. Respondent claims that he took off from the runway, not the taxiway. His passenger, respondent's employee, corroborates this claim. Respondent further testified that if he did take off from the taxiway, his mistake was inadvertent. He claims that he was experiencing trouble with his radio and that he did not hear the controllers' warnings.

As a result of an FAA investigation into this alleged operational violation, it was discovered that the medical certificate held by respondent appeared to be invalid. Respondent's airman medical file reveals that on April 1, 1991, he applied for a first-class airman medical certificate.⁵ In answer to the question, have you ever had any "heart trouble," respondent marked the box "yes" with an asterisk, and then reported in the remarks section that he had a possible thrombosis on January 4, 1991. He also reported on the application that on that same date, he was treated for "chest pain" by Peter Kaplan, MD. Respondent's Aviation Medical Examiner (AME) deferred the

⁵Respondent's airman medical file was sponsored into evidence by Dr. David Millett, Regional Flight Surgeon, FAA Southern Region. Dr. Millett was offered as an expert in medical certification issues. Respondent claims the law judge erroneously considered "expert" testimony from Dr. Millett on cardiovascular issues. We disagree. As a physician and a Regional Flight Surgeon, Dr. Millett was qualified to testify generally on the meaning of terms such as myocardial infarction and coronary artery disease, and to explain to the law judge why these conditions are disqualifying under the regulations.

application to the Federal Air Surgeon's Aeromedical Certification Division, in accordance with the FAR.

Respondent pursued the matter, and provided all the pertinent hospital records requested of him by the Aeromedical Certification Division. These records show that on January 4, 1991, respondent suffered a myocardial infarction [heart attack] and was admitted to a hospital. On January 10, 1991, respondent was discharged from the hospital with the following discharge diagnoses: (1) Acute inferior myocardial infarction aborted with successful thrombolytic therapy; (2) Atherosclerotic coronary vascular disease; and (3) Hyperlipidemia.

On April 30, 1991, respondent was advised by the FAA that because of his history of myocardial infarction, he could only be considered for a special issuance medical certificate.⁶ He was further advised that he could not be considered until six months after the event, and only after he submitted to further cardiac evaluation. Respondent submitted to another cardiac evaluation. On October 3, 1991, his application was denied, apparently because of unresolved questions concerning his cardiac status that were expressed by a medical panel convened by the Federal Air Surgeon. Respondent was advised that should he wish to pursue further consideration, he would have to submit to invasive testing (coronary catheterization) and a thallium stress test. Respondent again complied, and his application was re-evaluated.

⁶The Federal Air Surgeon has the discretion to issue restricted medical certificates to airmen with disqualifying conditions under FAR section 67.401 (then section 67.19).

Respondent's cardiac catheterization results showed no heart damage and only "[m]ild 3 vessel coronary disease." On March 23, 1992, he was issued a restricted medical certificate that was valid until October 31, 1992.

At the time of the issuance of the restricted medical certificate, respondent was instructed, in writing, that his continued certification was dependent on the results of another cardiac evaluation and thallium stress test on or about October 1, 1992, and again, at six-month intervals. He was also told that with future followups, the AME could not issue a certificate, but should instead submit all reports to the Aeromedical Certification Division for action. Respondent was reminded to report any adverse changes in his medical condition to the FAA. His special issuance medical certificate was renewed on November 4, 1992, and it remained valid until April 30, 1993. The letter accompanying the November 1992 special issuance certificate reiterated the need for cardiac exams and thallium stress tests at six-month intervals, and it again reminded respondent that an AME could not issue a certificate directly to him.

On November 21, 1994, respondent applied for and obtained an unrestricted second-class airman certificate from an AME. His application reveals that in response to the question, have you ever had "Heart or vascular trouble?" he replied, "no." On the question asking for disclosure of visits to health professionals within the last three years, respondent divulged only his October

1992, flight physical.

On March 13, 1995, the Aeromedical Certification Division wrote to respondent, and asked that he return the certificate. The certified letter was returned to the FAA, unclaimed. On July 5, 1995, another letter was sent. This letter was more strongly worded, advising respondent that his medical certificate was not valid, that he was required to pursue certification through the special issuance process because of his history of myocardial infarction, and it again asked for return of the certificate. This letter was also returned unclaimed. On August 14, 1995, a similar letter was sent and admittedly received by respondent. When he once again failed to return his certificate, the Administrator issued an Emergency Order of Revocation. Respondent did not appeal the revocation of his medical certificate to the NTSB, as instructed in the Administrator's order. Instead, he responded to the allegations in a letter addressed to FAA counsel, and returned the medical certificate with the letter. When he did not hear back, he testified, he assumed the case was closed.

On March 19, 1996, respondent underwent quadruple bypass surgery. Respondent did not report the surgery to the FAA until he applied for a third-class medical certificate, on October 9, 1996, following the operational incident now before us in this proceeding. On the October 1996, application, respondent answered "no" to the question, "Has your FAA airman medical certificate ever been denied, suspended, or revoked?" Respondent

wrote next to his answer that he had voluntarily surrendered his medical certificate after the bypass surgery.

Respondent's defense to the allegations is that he did not lie about his medical condition, because he did not believe that he had suffered a myocardial infarction. Respondent testified that he relied on his cardiologist, who, he claims, led him to believe that he did not have "heart trouble" because the myocardial infarction had been aborted by prompt medical treatment; that his cardiologist had told him there had been no damage to the heart muscle; and, because, no restrictions on his activities had been imposed on him by his cardiologist after the 1991 event and after his bypass surgery.⁷ Respondent also claims that he did not believe that tests ordered by the FAA were reportable "visits to health professionals," even though they occurred within three years of the application.⁸ Finally, respondent testified that he did not know that his 1994 medical certificate had been revoked.

Respondent's cardiologist, Dr. Peter Kaplan, testified that while he did tell respondent that the blood clot that caused his

⁷Respondent also testified that he did not know that he had to immediately report his bypass surgery to the FAA. (TR-283).

⁸Respondent offered a deposition of his cardiologist to support his claims, but the law judge would not admit it over opposing counsel's objection, because respondent made no showing of unavailability. This ruling was consistent with the Federal Rules of Evidence. The deposition testimony contained more than the witness' statement for purposes of medical diagnosis or treatment; it was relevant to the issue of respondent's actual knowledge. In any event, since Dr. Kaplan ultimately testified before the law judge, we find the issue moot.

myocardial infarction had been dissolved before any damage was done to his heart, and that in his opinion respondent had no restrictions and could fly with passengers, he never told respondent that he had not had a myocardial infarction. Moreover, Dr. Kaplan testified, they discussed respondent's coronary disease in 1991, and he was confident that respondent would recognize the warning signs if his disease progressed, which in fact it did in 1996, requiring bypass surgery. In Dr. Kaplan's view, respondent is qualified to hold an airman medical certificate because one out of five people do not find out they have coronary artery disease until they suddenly die from the disease, while respondent knows the warning signs.⁹ When asked on cross-examination whether respondent could reasonably believe that his negative answer to the question, "Have you ever had heart or vascular problems?" was correct, Dr. Kaplan testified that there was no way that respondent could have misinterpreted the question. Respondent certainly knew that he had heart trouble, Dr. Kaplan testified, and, arteriosclerosis is a "vascular problem." (TR 350-351).

The law judge ruled that the Administrator had established all of the factual allegations by a preponderance of the evidence. In explaining his findings, he stated:

Having had the opportunity to observe respondent's demeanor as a witness, and taking into consideration that he is a physician himself, and was thoroughly familiar with the diagnosis of myocardial infarction, I find that he had

⁹The issue of whether respondent is medically qualified to hold a restricted or unrestricted airman medical certificate is not before the Board.

actual knowledge that he had a history of heart trouble, and I find his testimony that he thought that because there was no residual damage to his heart, that he could truthfully answer no to a question as to whether he had a history of heart trouble, to be disingenuous, spurious, false on its face and totally unbelievable. (Initial Decision at 408).

In upholding the Administrator's revocation order in its entirety, the law judge further found:

In this case in view of the respondent's persistent pattern of evasion, obfuscation, and willingness to resort to making fraudulent and intentionally false statements in order to obtain medical certificates, I am compelled in line with the Board precedent to find that he lacks the care, judgment and responsibility required of the holder of any airman or medical certificate. He has shown no hesitancy to sacrifice truthfulness to expediency, and he has demonstrated the poorest compliance disposition. He is simply an untruthful individual who cannot be depended upon to answer any question or make any certification truthfully if it is contrary to his personal interests. Accordingly, I find that he lacks the care, judgment and responsibility required of the holder of any airman certificate and I further find that the appropriate sanction under Board precedent in a case such as this is to affirm revocation of all of his airman and medical certificates. (Initial Decision at 416).

Respondent argues in this appeal that the evidence does not support the law judge's findings of fact, and he claims that these findings show bias. We strongly disagree. We have reviewed the entire record, and there is ample evidence supporting the law judge's findings, which we adopt as our own. Nor is there any evidence of bias in the record. The law judge simply refused to accept respondent's inherently incredible testimony.

In order to find in respondent's favor, we would have to believe that respondent, a medical doctor, businessman, and pilot of many years, had absolutely no understanding of his medical condition, or of the very specific procedures under

which the Administrator issued him a restricted special issuance medical certificate. We would have to believe that respondent could not comprehend the instructions that required him to submit to cardiac evaluations every six months for continued special issuance certification. Finally, we would have to believe that respondent did not understand that issuance of future special issuance medical certificates could only be made by the Aeromedical Certification Division. We are, as was the law judge, unwilling to do so.

Board precedent stresses the need for accuracy and truthfulness in an airman's entries in logbooks, responses to applications for airman certificates, and preparation of other types of records. And, in order to insure the reliability of such records, the penalty for falsification is substantial. Those who are willing to make false statements in order to deceive the Administrator lack the care, judgment, and responsibility to hold any airman certificate. We agree with the law judge and the Administrator that the sanction of revocation of any airman certificates held by respondent is appropriate in this case.¹⁰

¹⁰Respondent's argument regarding the sanction assessed for his operational violation is misplaced. That sanction was subsumed by the sanction for fraud.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision and order are affirmed; and
3. The revocation of any airman certificates and medical certificates held by respondent shall begin 30 days after the service date indicated on this opinion and order.¹¹

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

¹¹For the purpose of this order, respondent must physically surrender his certificates to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).